

The Officers of State appealed against the interlocutor of *July 28, 1753*, in so far as it sustained the objection that the witnesses designations are not inserted in the body of the contract 1636; and against the interlocutor of *18th December, 1753*, by which the Court adhered to that finding.

On the other hand, the pursuer presented a cross appeal, complaining of the remaining parts of the interlocutor of *28th July, 1753*.

The House of Lords "ordered and adjudged that such parts of the said interlocutor as are complained of in the original appeal be reversed, and that the want of designation of the witnesses to the said contracts be repelled."

"Moved also that the cross appeal be dismissed, and that such parts of the said interlocutor as are therein complained of be affirmed."

This case is reported by *Elchies*, (*Patronage*, No. 5 and 7. *Sasine*, No. 8. *Writ*, No. 28 :) also by *Kames*, (*Mor.* 9923 : and in *Fac. Coll. Mor.* 9915.)

1753. *December 20.* THOMAS M'KENZIE of Highfield and OTHERS *against* SIR JOHN GORDON and OTHERS.

"*Nov. 19, 1753.*—THE Lords have now heard this debate. It is upon a very new case, and a very important case, as it concerns the jurisdiction of the Court, though, perhaps, of no difficult decision.

"Mr. M'Kenzie of Highfield, and M'Leod of Cadboll, apply by complaint, setting forth, that on the 28th July last, Mr. M'Kenzie lodged his claim with the sheriff-clerk of Cromarty, to be enrolled upon the roll of freeholders for the shire of Cromarty, as apparent heir to his grandfather; and that in a few days thereafter, the said Mr. M'Kenzie and M'Leod of Cadboll did severally give in objections, in terms of the statute of the 16th of the king, against Sir John Gordon, Mr. Charles Gordon, and Gordon of Ardoch, their being continued upon the roll. That, farther, they were acquainted, by letter from the sheriff-clerk, that the Michaelmas meeting was to be held on the 16th October. That the petitioners having repaired to Cromarty upon the 16th, they were let to know that though the whole of the gentlemen who compose the roll, and who are no other than Sir John Gordon, Mr. Charles Gordon, Gordon of Ardoch, and Leonard Urquhart, were in town, yet there was to be no meeting that day. Thereupon, the complainers required these gentlemen personally to hold the meeting, and the sheriff-clerk to attend, in order that justice might be done as the law directs; with which, nevertheless, on various pretexts they refused to comply; and, therefore, craving your Lordships may take into your consideration the titles on which Mr. M'Kenzie claimed to be enrolled, and the objections made to the persons objected to their continuing on the roll, and to do the justice they were entitled to have demanded of the freeholders, had they met.

"And parties having been now heard upon this complaint, and answers thereto made, the question is, How far it is competent for your Lordships to interpose in this matter?

"It is pled for the complainers, that it is competent for you, as you have not only a jurisdiction by statute in particular cases, but an original jurisdiction to cognosce of and redress all wrongs done to any of the lieges; and particularly in this

case, though you have no jurisdiction in the first instance, to judge of the qualifications of freeholders, in order to their being enrolled on the roll of freeholders, yet *ubi justitia est denegata* by those whose duty it is, your jurisdiction arises *ob denegatam justitiam*: and other instances are condescended on, wherein, though you have no jurisdiction in the first instance, yet you have in the second, *ob denegatam justitiam*.

“ It is ANSWERED,—That it may be true that in some cases wherein your Lordships have no jurisdiction in the first instance, yet you may have it *ob justitiam denegatam*, but, then, that is only in such cases wherein your Lordships have an original jurisdiction. But here you have no original jurisdiction,—no jurisdiction but what is given you by statute; for that all matters relating to the qualifications of freeholders, in order to their being put upon the roll of freeholders, are only cognoscible by part, and by your Lordships, no otherwise than in the cases in which jurisdiction is conferred upon you by statute, whereof that in question is none; and similar instances are condescended on, such as the case of the turnpike roads, where, if the trustees refuse to meet, your Lordships have no jurisdiction; or in the case of Commissioners of Supply, should they refuse to meet, your Lordships cannot lay on the cess,—your Lordships cannot divide valuation.

“ And, *separatim*, besides this general objection to the jurisdiction of the Court, it is *separatim* objected, that suppose you could interpose, the gentlemen could not be found fault with for not meeting, as no day had ever been fixed for the Michaelmas meeting in this shire, as the law directs. *2do*, At no rate could the application to your Lordships be by a summary complaint, such method of application to the Court being only competent in the particular cases mentioned in the statute. *3tio*, Though they had met, at no rate could Mr. M’Kenzie complain of any thing but of his not being put upon the roll; because, while he was not on the roll, he could not object to any body’s being continued on it, neither could vote, as he had not taken the oaths. But the great and total objection is to the jurisdiction of the Court.

“ *Dec. 20, 1753.*—The Lords dismissed this complaint as being groundless.

This case is reported by *Elchies (Member of Parliament, No. 60.)* and in *Fol. Dict. 3—428, (Mor. 8830.)*

1754. *January 9.* GEORGE TURNBULL *against* HIS MAJESTY’S ADVOCATE.

“ THE Lord Pitsligo, as patron of the parishes of Pitsligo and Aberdour, by his obligation in the 1665, bound himself, and his heirs and successors deriving right from him to the said parish churches and teinds thereof, from time to time, to procure to Alexander Frasers, elder and younger of Philorth, Sir William Baird of Auchinnedden, Fraser of Tyry, and others therein mentioned, and to their heirs and successors to them in their teinds in the said parishes, tacks of the teinds of their lands, by the ministers presented to the said kirks by him, or his heirs and successors, with consent of him or his successors, patrons thereof for the time, for yearly payment to the minister of the particular tack duties therein mentioned, and that during the lifetime of the respective incumbents. And, farther, he became obliged, that in case of any supervenient law, or change, or alteration of